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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,052	10/25/2000	Ludwig Busam	CM1778Q	9275
27752	7590	12/29/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 12/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/674,052	BUSAM ET AL.
	Examiner Michele Kidwell	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 September 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-12 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1 and 3-12 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims rejected under 35 U.S.C. 102(b) as being anticipated by Gilman et al. (US 5,437,653).

Regarding claim 1, Gilman et al. (hereinafter “Gilman”) discloses a laminate web comprising a liquid pervious first material (12) and a liquid pervious second material attached to the first material (20, 22,24), characterized by the first and second material having the claimed effective open area (col. 3, lines 31 – 34) and a plurality of apertures with the claimed effective size (col. 3, lines 58 – 63), said apertures of the second material being aligned with the apertures of the first material (col. 5, lines 9 – 11), wherein said second material has a hydrophilicity which is greater than the hydrophilicity of the first material (col. 6, lines 1 – 3) wherein a plurality of fibers of the first material and a plurality of fibers of the second material are substantially fused together about the apertures as set forth in col. 5, lines 26 – 27 and 30 – 31.

Initially, the examiner refers to MPEP 2113 which states:

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"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

The limitation requiring the plurality of materials to be substantially fused together about the aperture is a product by process limitation and only the end structure of the article is given patentable weight.

With reference to claim 3, Gilman discloses a laminate web wherein the first material (12) is a nonwoven web as set forth in col. 2, line 68 to col. 3, line 6.

As to claim 4, Gilman discloses a laminate web wherein the second material (20) is a nonwoven web as set forth in col. 4, lines 47 – 48.

With respect to claim 5, Gilman discloses a laminate web wherein the second material has a bonded area greater than the bonded area of the first material as set forth in figure 1.

If the entire bonded area (the length of the article as set forth in col. 3, lines 55 – 56) of the second material (20) is compared to only the outermost portion (i.e., the area to the left of the article in figure 1 where reference character "18" is located) of the bonded area of the first material (12), the second material (20) has a bonded area greater than a bonded area of the first material.

Regarding claim 6, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 15 percent as set forth in col. 3, lines 32 – 34.

Regarding claim 7, Gilman discloses a laminate web wherein the first and second material each have an effective open area of at least about 20 percent as set forth in col. 3, lines 32 – 34.

Regarding claim 8, Gilman discloses a laminate web wherein the first and second material each have a plurality of apertures with a size of at least 1.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 9, Gilman discloses a laminate web wherein the first and second materials have a plurality of apertures with a size of at least 2.0 square millimeters as set forth in col. 3, lines 58 – 63.

With respect to claim 10, Gilman discloses a laminate web wherein the second material has a width greater than that of the first material as set forth in figure 1.

If the entire width (band as shown in figure 1) of the second material (20) is compared to only the outermost width (i.e., the area to the left of the article in figure 1 where reference character “36” is located) of the first material (12), the second material (20) has a width greater than that of the first material.

Regarding claim 11, Gilman discloses a disposable absorbent article comprising a liquid pervious topsheet comprising the laminate web as set forth in the abstract and in col. 3, line 30 to col. 4, line 47.

As to claim 12, Gilman discloses a disposable absorbent article further comprising a backsheet (16) joined to the topsheet (col. 7, lines 51 – 52), and an absorbent core (22) positioned between the topsheet and the backsheet as set forth in figure 1.

Response to Arguments

Applicant's arguments filed September 29, 2004 have been fully considered but they are not persuasive.

The applicant's argument with respect to the rejection under 35 USC 103(a) is considered moot in view of the new grounds of rejection.

In response to the applicant's argument that Gillman does not teach or suggest a plurality of fibers of a first material and a plurality of fibers of a second material being substantially fused together about an aperture, the examiner refers to the rejection of claim 1 referencing MPEP 2113 which refers to a product by process limitation.

Gilman discloses that the fibers are joined together about the apertures as set forth in col. 5, lines 22 – 39 and in figure 2. The process by which these fibers are joined (i.e. fusing) is a product by process limitation. Only the end structure is given patentable weight.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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